

APPEAL NO. 041813
FILED AUGUST 31, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 7, 2004. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained an injury in the course and scope of his employment on _____; that the claimed injury did not occur while the claimant was in a state of intoxication therefore, the appellant (carrier) is not relieved of liability for compensation; and that the claimant had disability, as a result of his compensable injury, from March 12, 2004, through the date of the hearing. In its appeal, the carrier asserts error in each of those determinations. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The success of the carrier's argument that the claimant did not sustain a compensable injury and that he did not have disability is dependent upon the success of its argument that the claimant was intoxicated at the time of his injury. On _____, the claimant injured his right shoulder, while breaking a seam bolt loose with a wrench and a ratchet. Following his injury, the claimant tested positive for the presence of marijuana metabolites at a level of "83 ng/ml on a dilute specimen." The carrier introduced a report from Dr. A who stated "In my opinion, based on reasonable medical probability, the employee was in a state of acute intoxication at the time of the injury based on the drug urine result for marijuana, which was high enough to impair his abilities (impaired judgment and coordination), and that the intoxication and impairment were proximate causes to his accidental injury." The claimant relied on witness statements from two coworkers, his own testimony, and the testimony of Mr. Z, the foreman of the job where the claimant was working at the time of his injury, to demonstrate that he had the normal use of his mental and physical faculties at the time of his injury.

Section 406.032(1)(A) provides that a carrier is not liable for compensation if the employee was in a state of intoxication at the time of the injury. For purposes of this case, intoxication is defined as not having the normal use of mental or physical faculties from the voluntary introduction of a controlled substance into the body. See Section 401.013(a)(2). An employee is presumed sober. Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. A carrier rebuts the presumption by presenting probative evidence of intoxication. Texas Workers' Compensation Commission Appeal No. 91018, decided September 19, 1991. Once a carrier introduces evidence of intoxication, the burden shifts to the employee to prove that he was not intoxicated at the time of injury. In this instance, there is no dispute that the positive drug screen was sufficient to shift the burden to the claimant to prove that

he was not intoxicated at the time of his injury. Whether a claimant is intoxicated at the time of an injury is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950266, decided March 31, 1995. The hearing officer was acting within her province as the fact finder in crediting the evidence from the claimant, and the claimant's supervisor, and his coworkers in determining that the claimant had the normal use of his mental and physical faculties at the time of his injury and, thus, was not intoxicated within the meaning of the 1989 Act. Our review of the record does not demonstrate that the hearing officer's determination in that regard is so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the intoxication determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Finally, we find no merit in the carrier's assertion that the hearing officer applied an incorrect standard in resolving the intoxication issue. The hearing officer specifically found that the claimant had the normal use of his mental and physical faculties at the time of his injury. That is, she properly identified the standard and applied it in this case. Thus, we simply cannot agree that the hearing officer applied the incorrect legal standard in considering and resolving the intoxication issue.

Given our affirmance of the hearing officer's determination that the claimant was not intoxicated at the time of his injury at work on _____, we likewise affirm the determination that he sustained a compensable injury and that he had disability from March 12, 2004, through the date of the hearing.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge